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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~378.~~ 98

THOMAS D. W. YANLEY, PLAINTIFF IN ERROR,

vs.

WILLIAM D. LAVENDER, ROBERT M. ANDERSON, JOHN ROSS AND JAMES J. PACE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ARKANSAS.

FILED DECEMBER 20, 1872.

Oct. 9, 1874

SUPREME COURT OF THE UNITED STATES.

No. 378.

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a To the Hon. John McClure, chief justice of the supreme court of Arkansas:

Your petitioner, Thomas D. W. Yanley, would respectfully show, that, on the 13th day of May, 1872, judgment was rendered against your petitioner in a cause then pending in said court wherein he was appellant, and William M. Lavender, Robert M. Anderson, John Ross, and James J. Pace were appellees; and that the said supreme court of the State of Arkansas is the highest court of law or equity in said State, in which a decision could be had; and that the said judgment is final, in which judgment was drawn in question the validity of statutes of, and authority exercised under the United States; and that the said decision was against their validity; and that the said decision was against the right and title claimed by petitioner in said suit; all of which appear of record in the said cause; and whereas manifest error hath occurred in the said proceedings in this, that the said supreme court of Arkansas decided that a sale made by a marshal of the United States under execution issued on a judgment rendered by a circuit court of the United States against an administrator of the estate of a de-
b ceased person was void, and would give to the purchaser, at such sale, no right or title to the property so purchased. Further, that to correct the said error the said petitioner has sued out a writ of error to the Supreme Court of the United States, in the said cause, in order that speedy justice may be done to the parties in that behalf, which writ of error is herewith presented.

Wherefore your petitioner prays that your honour will allow the said writ of error as provided by law, and your petitioner will ever pray, &c.

THOMAS D. W. YANLEY.

ROSE, *Attorney.*

c UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the supreme court of Arkansas, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said supreme court, before you, or some of you, being the highest court of law or equity of said State in which a suit could be had, between Thomas D. W. Yanley, appellant, and William D. Lavender, Robert M. Anderson, John Ross, and James J. Pace, appellees, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favour of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Thomas D. W. Yanley, as is said, and as appears by his complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with

all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the first Monday of December next, that the record and proceedings aforesaid being inspected, the said justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness the honorable Chief Justice of the Supreme Court of the United States this 24th day of May, in the year of our Lord one thousand eight hundred and seventy-two, and of the Independence of the United States the

[SEAL.] FRANK E. WRIGHT,
Clerk of the Circuit Court of the United States of America for the Eastern District of Arkansas.

Allowed by—

JOHN McCLURE,
Chief Justice of Sup. C't of Arkansas.

MAY 24, 1872.

(Indorsed:) Thomas D. W. Yanley v. William D. Lavender et al. Petition and writ of error. Filed May 24, 1872. N. W. Cox, clerk.

d The United States of America unto William M. Lavender, Robert M. Anderson, John Ross, and James J. Pace, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the supreme court of Arkansas, wherein Thomas D. W. Yanley is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Hon. John McClure, chief justice of the supreme court of Arkansas, on this sixth day of May, 1872.

JOHN McCLURE,
Chief Justice of Sup. C't of Arkansas.

MAY 24, 1872.

Service of this citation acknowledged May 24, '72.

A. H. GARLAND,
Att'y for Lavender & others.

(Indorsed:) Thomas D. W. Yanley vs. William D. Lavender et al. Citation. Filed May 24, 1872. N. W. Cox, cl'k.

e Know all men by these presents, that we, Thomas D. W. Yanley as principal, and W. W. Wilshire as surety, are held and firmly bound unto William D. Lavender, Robert M. Anderson, John Ross, and
the just and full sum of two hundred and fifty dollars,
said William D. Lavender, Robert M. Anderson, John
J. Pace, their certain attorneys, executors, administra-
to which payment, well and truly to be made, we bind
irs, executors, administrators, firmly by these presents.
seals and dated this 24th day of May, 1872.

Whereas lately in the supreme court of Arkansas, in a suit depending in said court between Thomas D. W. Yanley, appellant, and William D. Lavender, Robert M. Anderson, John Ross, and James J. Pace, appellees, aforesaid, judgment was rendered against the said appellant, and the said appellant having obtained a writ of error, and filed a copy threof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said appellees, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday in December next:

Now the condition of the above obligation is such, that if the said Yanley shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

W. W. WILSHIRE. [SEAL.] [SEAL.]

Sealed and delivered in my presence, and approved by me.

JOHN McCLURE,
Chief Justice of the Sup. C't of the State of Ark.

(Indorsed:) Thomas D. W. Yanley v. William D. Lavender et al. Bond for costs. Filed May 24, 1872. N. W. Cox, cl'k.

1 Pleas begun and held at the court-house in the city of Little Rock, in the State of Arkansas, on the first Monday, the same being the 4th day of December, A. D. 1871, before the honorable supreme court of the State of Arkansas, honorable John McClure, chief justice, presiding. Among other proceedings had were the following:

THOMAS D. W. YANLEY, APPELLANT,
vs.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

Be it remembered that, on the 16th day of June, 1870, said appellant filed in the clerk's office of said supreme court the following transcript, to wit:

1 Complaint at law, before Hon. Henry B. Morse, judge of the 10th judicial circuit, in the Arkansas County circuit court, on the 7th day of May, 1870.

In the Arkansas circuit court.

THOMAS D. W. YANLEY, PLAINTIFF,
vs.
WILLIAM D. LAVENDER, ROBERT M. ANDERSON, JOHN ROSS, and JAMES J. PACE, defendants. } Complaint at law.

The plaintiff, Thomas D. W. Yanley, states that he is the owner and entitled to the possession of a tract of land in Arkansas County, containing twelve hundred and eighty (1,280) acres, more or less, and described as follows: Sections fifteen (15) and sixteen (16) in township six (6) south, range six (6) west of the fifth principal meridian. That the defendants, W. D. Lavender, Robert M. Anderson, John Ross, and John Pace, now hold possession of the land without right, and for ten months past have unlawfully kept the plaintiff out of possession.

Wherefore he prays judgment for the recovery of the land and ten thousand dollars damages for being kept out of possession, and for other proper relief.

2 THOMAS D. W. YANLEY.

WATKINS & ROSE,
Attorneys.

STATE OF ARKANSAS,
County of Pulaski:

This day came before me, a justice of the peace in and for the county and State aforesaid, Thomas D. W. Yanley, to me well known, and being by me duly sworn, he states that he believes the statements contained in the foregoing complaint to be true.

Sworn to and subscribed before me this 6th day of April, 1870.

THOMAS B. HENIBEURY, *J. P.*,
Pulaski County, State of Arkansas.

(Indorsed:) Thomas D. W. Yanley vs. W. D. Lavender et al. Ejectment complaint. Filed April 11th, 1870. E. R. Wiley, clerk, by A. C. Wiley, d. c. Watkins & Rose.

The State of Arkansas to the sheriff of Arkansas County:

You are hereby commanded to summon W. D. Lavender, Robert
3 M. Anderson, John Ross, and John Pace, to answer on the first day of the next spring term of the Arkansas circuit court a complaint filed against him in said court by Thomas D. W. Yanley, and warn him that, upon his failure to answer, the complaint will be taken for confessed, and you will make due return of this summons on the first day of the next May term of said court.

Witness my hand and the seal of said court, this 11th day of April, A. D. 1870.

E. R. WILEY, *Clerk.*
By A. C. WILEY, *D. C.*

(Indorsed:) No. 83. T. W. D. Yanley vs. D. Lavender et al., Complaint at law. Summons. Sh'ff's fee, 7.75. Paid by Col. Wiley, $5.00. Filed April 28, 1870. E. R. Wiley, clerk, by A. C. Wiley, d. c.

Came to hand April 11th, 1870, 3 o'clock p. m.

JOSEPH H. MAXWELL,
Sh'ff.

I executed this writ on the within-named W. D. Lavender & John Ross; at the county of Arkansas, on the 14th day of , 1870, and I executed this writ on the within-named Rob't M. Anderson, at the county of Arkansas, on the 16th day of April, A. D. 1870, by
4 then & there delivering to each of them a true copy thereof. The within-named John Pace is not to be found in my county.

Given under my hand this 18th day of April, 1870.

JOSEPH H. MAXWELL, *Sh'ff.*
By B. N. WARD, *D. Sh'ff.*

Arkansas c't c't, spring term, 1870.

T. D. W. YANLEY
vs.
W. D. LAVENDER ET AL.

Comes Rob't M. Anderson, one of the defendants in the above-entitled suit, and for separate answer states:

1st. That the north ½ of the northeast quarter and the south ½ of the southeast quarter of section sixteen township six south, of range six of the fifth principal meridian, situate in the county of Arkansas, State of Arkansas, and a part of the land claimed in the plaintiff's complaint, was a portion of the 16th section aforesaid retained by the State for school purposes.

2d. That some time in the year 18 , Alfred B. C. Debose, deceased, purchased said section from the school commissioner, but neglected and refused to pay for the same according to the terms of sale.

3d. That some time about the seventh day of October, A. D. 1867, after the same had been duly advertised for sale by the school
5 commissioner, one W'm L. Patterson purchased of said school commissioner the above-described tract or parcel of land, complying in all things with the terms of said sale.

4th. That on or about the 24th day of June, A. D. 1868, the said defendant, Robert M. Anderson, purchased of said Patterson for a good and valid consideration all his right, title, and interest to said land, which will more fully appear by reference to the deed of transfer which is hereto attached and made a part of this answer.

5th. Wherefore the said defendant claims the lands above described, in his own right, independent of any hostile title whatever, and asks for judgment for the same and for other relief.

BRADSHAW & GARLAND & NASH,
Atty's for Def't Anderson.

STATE OF ARKANSAS,
County of Arkansas:

I, Robert M. Anderson, def't above named, do solemnly swear that the matters and facts set forth in the foregoing answer, as I verily believe, are true, so help me God.

R. M. ANDERSON.

Sworn to and subscribed before me this 3d day of May, 1870.
R. E. WILEY, *Clerk.*

6 Know all men by these presents, that for and in consideration of the sum of thirty dollars to us in hand paid we, William L. Patterson, and his wife, Annie W. Patterson, have this day assigned, bargained, sold, and conveyed and transferred unto R. M. Anderson all of our right, title, and claim, interest and property, in and to the following described piece and parcel of land lying in the county and State of Arkansas: The north half of the northeast quarter and the south half of the southeast quarter of the sixteenth section township 6 south in range 6 west of the fifth principal meridian, being the same land conveyed to the said Patterson and wife on the seventh day of Oct., 1867, by Edward Johnson, commissioner schools for said county, in his official character of school commissioner: to have and to hold to the said Anderson, his heirs and assigns forever, together with all rents and profits thereof now accrued or which may hereafter accrue.

In witness whereof we have this hereunto set our hands and seals, twenty-fourth day of June, 1868.

W'M. L. PATTERSON. [SEAL.]
A. W. PATTERSON. [SEAL.]

(Indorsed:) Patterson to R. W. Anderson. Certificate of transfer. No. 83. T. D. W. Yanley vs. W'm D. Lavender et al. Ans. of

7 Rob't M. Anderson, one of def'ts. Filed May 4th, 1870. E. R. Wiley, clerk. Bradshaw, Garland & Nash, att'ys for Anderson.

Arkansas c't c't, spring term, 1870.

THOMAS *T.* W. YANLEY
vs.
W'M D. LAVENDER ET AL.

Comes the said defendants, W'm D. Lavender, John Ross, James G. Pace, and Rob't M. Anderson, and deny that the plaintiff herein has any title to the property herein described whatever.

BRADSHAW, GARLAND & NASH,
Att'ys for Plaintiff.

The plaintiff waives affidavit to the foregoing answer.

WATKINS & ROSE,
For Plaintiff.

(Indorsed:) No. 83. Thomas D. Yanley vs. W'm D. Lavender et al. Ans. Filed May 7th, 1870. E. R. Wiley, clerk. Bradshaw, Garland & Nash, att'ys for def't.

In the circuit court of Arkansas County, at May term, A. D. 1870.

8 THOMAS D. W. YANLEY, PLAINTIFF,
vs.
WILLIAM D. LAVENDER, ROBERT M. ANDERSON, John Ross, and James J. Pace, defendants. } Complaint at law.

Upon the complaint and answer on file in this cause, and upon the following agreed statement of facts, this cause is submitted to the court sitting as a jury for the trial thereof, by consent of parties, neither party requiring a jury; and which facts are as follows:

That in October, 1869, William H. Halliburton, the administrator of said Alfred B. C. Du Bose, deceased, was removed by the probate court of said county of Arkansas, and the defendant, William D. Lavender, was appointed by said probate court administrator de bonis non of the estate of said Du Bose, who has ever since continued to be, and is, such administrator. That at the time of the commencement of this suit the defendants were in possession of the lands and premises in said complaint mentioned, the said Ross and Pace holding such possession under and by lease from said Lavender as such administrator, and said Anderson as to portion thereof, as hereinafter stated. That on the

9 3d day of March, 1869, the plaintiff purchased said lands and premises at a marshal's sale thereof, upon execution of a judgment of the circuit court of the United States for the eastern district of Arkansas against the administrator of said estate. A transcript of which judgment, including the writs of fieri facias, execution issued thereon, and returns of the marshal on said writs, marked A, and the original deed of the marshal to the plaintiff for said lands, marked B, are herewith filed, and so referred to and made part hereof.

As to the portions of said land claimed by the defendant, Robert M. Anderson, and described in his answer, the additional facts are as follows: In the year 1854 said last-mentioned tracts of land were sold by the proper school commissioner authorized by law to sell the same, and who issued the usual certificate of purchase, as prescribed by law in

such case, to the purchaser thereof, who, for a valuable consideration, assigned and transferred the same to said Du Bose, who paid the interest accruing on the purchase-money therefor from the time of the sale thereof by said commissioner until the year 1860. That on the 7th day of October, 1867, Edward Johnson, common-school commissioner for said county of Arkansas, after said Du Bose, who died in
10 the year 1864, and his legal representatives succeeding him had failed to pay two instalments of interest on the purchase-money of said tracts, offered the same for sale again, in the manner prescribed by law in such cases, at which sale William L. Patterson became the purchaser thereof, and received the usual certificate of purchase therefor as prescribed by law in such case, and afterwards, on the 24th day of June, 1868, sold and transferred the same to the defendant, Anderson, as shown in the exhibit annexed to this answer.

The annual value of the rents of said land in possession of the defendants, except said Anderson, since the 3d day of March, 1869, is $4,325.00, and the value of the rents of the portions thereof claimed by said Anderson is at the rate of $500 per annum since said time. Either party may ask the court to declare its opinion of the law applicable to the case upon the facts stated, and reserve any question of law by bill of exceptions.

GARLAND & NASH & BRADSHAW,
Att'ys for Defendants.
WATKINS & ROSE,
Att'ys for Plaintiff.

11 (Indorsed:) T. D. W. Yanley vs. W'm D. Lavender and others. Complaint at law. Agreed statement of facts; filed May 7, 1870. E. R. Wiley, clerk.

Be it remembered, that on the twenty-sixth day of January, A. D. 1867, came into the clerk's office of the United States circuit court for the eastern district of Arkansas, Auguste Gautier, by T. D. W. Yanley, esq'r, his attorney, and filed herein his declaration in assumpsit, which is in the words and figuers following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

In the United States circuit court for said district to April term, A. D. 1867.

Auguste Gautier, who is a citizen of the State of Louisiana, plaintiff in this suit, by attorney complains of William H. Halliburton, administrator of all and singular the goods, chattels, and credits which were of Alfred B. C. De Bose, deceased, at the time of his death, who died intestate, and which said William H. Halliburton is a citizen of the State of Arkansas and a resident within said eastern district, defendant
12 herein, of a plea of trespass on the case on promises, for that whereas the said Alfred B. C. De Bose in his lifetime, to wit, on the 26th day of February, A. D. 1861, at Swan Lake, Arkansas, to wit, at the district aforesaid, made his certain promissory note in writing, now here to the court shown, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, and thereby then and there promised to pay on the 24th day of February, A. D. 1862, to the order of S. O. Nelson & Co., who are citizens of the State of Louisiana, at their counting-

house in the city of New Orleans, the sum of eighteen hundred dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid, and then and there delivered said promissory note to the said S. O. Nelson & Co., and said S. O. Nelson & Co., to whom or to whose order the payment of said sum of money in the said promissory note specified was by the said promissory note to be made, after the making of the said note and before the payment of said sum of money in said promissory note specified, to wit, on the day and year aforesaid, at the district aforesaid, endorsed the said note, which said endorsement is now here to the court shown, by which said endorsement, the said S. O. Nelson & Co. then and there ordered and appointed the said sum of money in said promissory note specified
13 to be paid to the said plaintiff, and then and there delivered the said promissory note so endorsed as aforesaid to the said plaintiff, of which said indorsement the said Alfred B. C. De Bose afterwards in his lifetime, to wit, on the day and year aforesaid, had notice. By means whereof, and by force of the statute in such case made and provided, the said Alfred B. C. De Bose in his lifetime then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, with interest thereon at the rate therein mentioned according to the tenor and effect of said promissory note, and being so liable, he, the said Alfred B. C. De Bose, in his lifetime, in consideration thereof, afterwards, to wit, on the day and year aforesaid, at the district aforesaid, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in said promissory note specified, with interest thereon at the rate aforesaid, according to the tenor and effect of said promissory note. Yet the said Alfred B. C. De Bose in his lifetime, and the said William H. Halliburton, as administrator as aforesaid after the death of the said Alfred B. C. De Bose, not regarding, &c., but contriving, &c., to deceive and defraud the said plaintiff in this behalf, hath not nor hath either of them
14 as yet paid the said sum of money in the said promissory note specified, or any part thereof, or the interest accrued thereon, at the rate therein specified, or any part of said interest, according to the tenor and effect of said promissory note, to the said plaintiff, although often requested so to do, but to pay said principal sum or interest accrued thereon, or either or any part of either, to the said plaintiff, the said Alfred B. C. De Bose in his lifetime wholly refused, and the said defendant hath ever since the death of the said Alfred B. C. De Bose hitherto wholly refused and still refuses so to do, to the damage of the said plaintiff of four thousand dollars; and therefore he sues.

T. D. W. YANLEY,
Att'y for Plaintiff.

I, Thomas D. W. Yanley, acknowledge myself as security for all costs for which the plaintiff may be liable in this suit.

T. D. W. YANLEY.

Filed & writ issued January 26th, 1867.

CHA'S P. REDMOND,
Clerk.

And on which declaration the clerk issued a writ of summons, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States, to the marshal for the eastern district of Arkansas, greeting:

15 You are hereby commanded to summon William H. Halliburton, who is a citizen of the State of Arkansas, defendant herein, administrator of all and singular the goods and chattels, &c., which were of Alfred B. C. De Bose, deceased, at the time of his death, if he be found within your district, to appear before the judges of our circuit court of the United States in and for the eastern district of Arkansas, at the United States court-room in the city of Little Rock, on the first day of our next April term, 1867, to answer Auguste Gautier, who is a citizen of the State of Louisiana, plaintiff herein, of a plea of trespass on the case on promises to the damage of said plaintiff, to the damage of plaintiff of four thousand dollars, and have you there and then this writ with the manner of execution hereof endorsed thereon.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court, to be hereunto affixed this 26th day of January, A. D. 1867, and in the 91st year of our Independence.

CHA'S P. REDMOND,
Clerk.

[L. S.] Attest:
[50 int. rev. st'p.]

16 On which writ of summons the marshal makes return, as follows:

In obedience to the within writ, I have summoned the within-named William H. Halliburton, adm. of A. B. C. De Bose, by reading the same to him in his presence and hearing at De Witt, Arkansas, in the eastern district of Arkansas, on the 9th day of March, A. D. 1867.

ISAAC C. MILLS,
U. S. Marshal for East. Dis't Ark.
By R. H. M. MILLS,
Dep'ty.

Fees, 2.00; mileage, 10.80; ret., .25—$13.05.

Returned and filed this 9th day of March, A. D. 1867.
CHA'S P. REDMOND,
Clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Be it remembered, that at a circuit court of the United States of America in and for the eastern district of Arkansas, begun and holden on Monday, the 8th day *day* of April, anno Domini one thousand eight hundred and sixty-seven, at the United States court-room in the city of Little Rock, Arkansas, the honorable Henry C. Caldwell, district judge, presiding and holding said court, the following proceedings were had, to wit:

17 And on April 10th, A. D. 1867, it being yet a day of the April

term aforesaid, the following further proceedings were , to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R OF A. B. C. DE BOSE.

And now comes said defendant by Clark, Williams & Martin, his attorneys, and files herein his prayer of oyer; which prayer of oyer is in the words and figures following, to wit:

Circuit court of U. S., eastern district of Arkansas, April term, 1867.

AUGUSTE GAUTIER
vs.
W'M H. HALLIBURTON, AS ADM'R.

And the said defendant comes and prays oyer of the note in said plaintiff's declaration mentioned.

CLARK, WILLIAMS & MARTIN,
For Halliburton.

Filed April 10th, 1867.

CHA'S P. REDMOND,
Clerk.

And on April 11th, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

18 AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R OF A. B. C. DE BOSE.

And now comes said plaintiff by Yanley & Farrelly, his attorneys, and grants oyer by exhibiting and filing the original note sued on, which note is in the words and figures following, to wit:

1800.

SWAN LAKE, ARKANSAS,
February 26th, 1861.

On the fourteenth February, 1862, I promise to pay to the order of S. O. Nelson & Co., at their counting-house in the city of New Orleans, eighteen hundred dollars for value received, bearing interest at the rate of eight per cent. per annum after maturity until paid.

Feb'y 14, '62.

ALFRED B. C. DE BOSE.

Inventoried by me on the 8th June, 1865.

Indorsed as follows:

We hereby waive demand and protest of the within note, and hold ourselves responsible for the same as if it had been protested regularly.

S. O. NELSON & CO.,
Per J. S. LANPHER.

FEB'Y 15, 1862.

Pay to the order of Auguste Gautier.

S. O. NELSON & CO.

Filed April 11th, 1867.

CHA'S P. REDMOND,
Clerk.

19 Withdrawn from files Dec. 16, '67, by order of court.
CHA'S P. REDMOND,
Clerk.

And on April 19th, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R OF A. B. C. De Bose.

And now comes said defendant, by Clark, Williams, and Martin, his attorneys, and files herein his plea in abatement; which plea in abatement is in the words and figures following, to wit:

In the United States circuit court for the eastern district of Arkansas, at the April term, A. D. 1867.

AUGUSTE GAUTIER
vs.
W'M H. HALLIBURTON, AS ADM'R OF ESTATE of Alfred B. C. De Bose.

And now, on this day, comes the said defendant, administrator, &c., and having had oyer of the promissory note in said plaintiff's declaration mentioned, prays that said writ and declaration may be
20 quashed, because, he says, that said plaintiff did not, nor did any other person for him, at any time previous to the commencement of this action, make oaths that nothing had been paid or delivered towards the satisfaction of the said plaintiff's demand except what was credited thereon, nor that any specified sum was justly due thereon by or upon which the said defendant, as such administrator, was or could be authorized by law to allow or pay the remnant of the moneys of said estate; and which the said defendant is ready to verify by the . Wherefore he prays judgment, and that the said writ and declaration may be quashed.

CLARK, WILLIAMS, & MARTIN,
For Def't.

Filed April 19th, 1867.
CHA'S P. REDMOND, *Clerk.*

And on April 23d, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R OF A. B. C. De Bose.

And now comes said plaintiff by Yanley and Farrelly, his attorney, and files herein his demurrer to defendant's plea in abatement; and the same is now heard, argued, and submitted to the court, and
21 the court takes time to consider of its judgment; which demurrer is in the words and figures following, to wit:

In the United States circuit court, at April term, A. D. 1867.

EASTERN DISTRICT OF ARKANSAS, *ss:*

AUGUSTE GAUTIER
vs.
W'M H. HALLIBURTON, AS ADM. A. B. C. DE BOSE.

And the said plaintiff saith that the said plea of the said defendant, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law to quash the said declaration and writ, and that the said plaintiff is not bound by law of the land to answer the same, and this he is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and that the said defendant may answer further to the consideration, &c.

YANLEY & FARRELLY,
Att'ys for Pl'ff.

Filed April 23d, 1867.

CHA'S P. REDMOND, *Clerk.*

And on April 24th, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

22 AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R A. B. C. De Bose.

And now, the court having sufficiently considered the demurrer to the plea in abatement herein, heretofore submitted to the court, and being now well advised in the premises, considers that said demurrer be annul'ed.

And on April 30th, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM'R OF A. B. C. De Bose.

And now comes the said plaintiff by Yanley and Farrelly, his attorneys, and, by consent, enter in short upon the record his replication to defendant's plea in abatement; and comes the defendant by Clark, Williams, and Martin, his attorneys, and the parties hereto make and file herein their written agreement, signed by their respective counsel, waiving a jury and submitting the matters arising on defendant's plea in abatement to trial by the court, and the same is hereby submitted to the court without argument; which agreement is in the words
23 and figures following, to wit:

AUGUSTE GAUTIER
vs.
W'M H. HALLIBURTON, AS ADM'R OF A. B. C. De Bose, dec'd.

And the said parties by their respective attorneys come and submit the trial of the issue joined upon their plea in abatement filed in this

cause by the said defendant to the court sitting as a jury, a jury having been waived by the parties.

CLARK, WILLIAMS & MARTIN,
Atty's for Def't.

T. D. W. YANLEY,
Att'y for Plaintiff.

Filed April 30th, 1867.

CHA'S P. REDMOND,
Clerk.

And on May the 1st, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM. OF A. B. C. De Bose.

And now the court, having sufficiently considered the issue arising on the plea in abatment in this cause, doth find the issue for the plaintiff, and the defendant failing further to plead or defend herein;
24 wherefore said plaintiff ought to recover from said defendant their damages for the non-performances of the defendant's said promises, and the plaintiff having heretofore filed herein the promissory note on which this action is founded.

It is therefore ordered, considered, and adjudged that said plaintiff, Auguste Gautier, do have and recover of and from said defendant, William H. Halliburton, as administrator of Alfred B. C. De Bose, the sum of twenty-five hundred and forty-nine dollars and twenty cents for his damages, with interest thereon at the rate of eight per centum per annum from the first day of May, A. D. 1867, until paid, together with all his costs in and about this suit expended, to be levied of the goods and chattels and lands and tenements which were of the said Alfred B. C. De Bose, deceased, at the time of his death in the hands of the said defendant, William H. Halliburton, as administrator, remaining to be administered, of so much thereof in his hands to be administered he hath, and that he have execution therefor.

And on December 16th, A. D. 1867, it being yet a day of the April term aforesaid, the following further proceedings were had, to wit:

AUGUSTE GAUTIER
vs.
WILLIAM H. HALLIBURTON, ADM. A. B. C. De Bose.

25 And now comes said plaintiff by Yanley & Farrelly, his attorneys, and files herein his motion, and moves the court for leave to withdraw from the files the *note* upon which the said suit is brought upon filing a copy of the original herein.

It is ordered that said motion be granted and allowed and that plaintiff have leave to withdraw the note as prayed for; which motion is in the words and figures following, to wit:

In U. S. circuit court, eastern district of Arkansas.

AUGUSTE GAUTIER
vs.
W. H. HALLIBURTON, ADM'R OF DE BOSE.

And now comes the said plaintiff, by attorney, and moves the court

here to grant him leave to withdraw the note heretofore filed in said cause upon filing therein a copy of said note.

P. D. W. YANLEY, *Att'y.*

Filed Dec. 16, '67.

CHA'S P. REDMOND,
Clerk.

And on the 20th day of May, 1867, the clerk of said court issued a writ of scire facias, which is in the words following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

26 The President of the United States to the marshal of the eastern district of Arkansas, greeting:

Whereas Auguste Gautier, on the first day of May, 1867, in our circuit court of the United States for the eastern district of Arkansas, hath recovered against William H. Halliburton, as administrator of Alfred B. C. De Bose, the sum of twenty-five hundred and forty-*five* ($2,549) dollars and twenty cents, which were adjudged to him for his damages, with interest on said damages at 8 per centum per annum from the first day of May, A. D. 1867, until paid; together with the sum of thirty-five (35) dollars and eighty (80) cents for costs sustained in the suit:

You are therefore commanded that of the goods and chattels, lands and tenements, which were of the said Alfred B. C. De Bose at the time of his death remaining in the hands of said William H. Halliburton, administrator, unadministered, if so much thereof he hath, you cause to be made the damages aforesaid, together with the costs aforesaid, so that you have the same before the clerk of our said court at his office in the city of Little Rock on the second Monday of October next, to be paid over to said plaintiff, and then and there certify how you have executed this writ.

27 In testimony whereof Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this 20th day of May, A. D. 1867, and in the 91st year of our Independence.

Attest:

[L. S.] CHA'S P. REDMOND,
Clerk.

On which the marshal makes return as follows:

Return the within execution without levy.
Oct. 2d, 1867.

YANLEY & FARRELLY.

By order of plaintiff's attorney I hereby return the within execution without levy.
Oct. 2d, 1867.

ISAAC C. MILLS,
U. S. Marshal East. Dis't Ark.

Fees: return, .75.

(Endorsed as follows:) No. 40. U. S. circuit court eastern district of Arkansas. Auguste Gautier vs. W'm H. Halliburton, adm. A. B. C. De Bose. Fieri facias. Issued May 20th, 1867; returnable Oct., 1867. Judgment May 1, 1867. Debt . Damages $2,549.20. Costs 35.80. Returned and filed Oct. 3, A. D. 1867. Cha's P. Redmond, clerk. Yanley & Farrelly, plaintiff's attorneys.

And on June 18th, 1866, we issued an alias writ of fieri facias, which is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States to the marshal of the eastern district of Arkansas, greeting:

Whereas Auguste Gautier, on the first day of May, A. D. 1867, in our circuit court of the United States for the eastern district of Arkansas, hath recovered against William H. Halliburton, as administrator of Alfred B. C. De Bose, the sum of twenty-five hundred and forty-nine (2,549) dollars and twenty cents, which were adjudged to him for his damages with interest on said damages at 8 per centum per annum from the 1st day of May, A. D. 1867 until paid, together with the sum of thirty-eight (38) dollars and 25 cents for costs sustained in the suits: You are therefore commanded, that of the goods and chattels, lands and tenements, which were of the said Alfred B. C. De Bose at the time of his death remaining in the hands of the said William H. Halliburton, administrator, if so much thereof he hath, you cause to be made the damages and interest aforesaid, together with the costs aforesaid, so that you have the same before the clerk of our said court at his office, in the city of Little Rock, on the second Monday in October next, to be paid over to said plaintiff, and then and there certify how you have executed this writ.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of
29 the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed, this 18th day of June, A. D. 1868, and in the 92d year of our Independence.

Attest: CHA'S P. REDMOND, *Cle'k.*
Per R. L. GOODRICH, *V. C.*

Marshal's return.

The within writ returned for pluries writ.

ISAAC C. MILLS,
U. S. Marshal.
R. H. M. MILLS, *Dep.*

Fees, $31.40.

(Endorsed:) No. 170. U. S. circuit court eastern district of Arkansas. Auguste Gautier vs. W'm H. Halliburton, adm. A. B. C. De Bose Alias fieri facias; issued June 18th, 1868; returnable Oct. 12th, 1869. Judgment May 1st, 1867; debt ; damages 2,549.20; costs 38.25. Returned and filed Dec. 1, A. D. 1868. Cha's P. Redmond, clerk. Yanley & Farrelly, plaintiff's attorneys.

And on December 1, 1868, the clerk issued a pluries writ of fieri facias, which is in the words and figures following, to wit:

30 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

The President of the United States of America, to the marshal of the eastern district of Arkansas, greeting:

Whereas Auguste Gautier, on the 1st day of May, A. D. 1867, in our circuit court of the United States for the eastern district of Arkan-

sas, hath recovered against William H. Halliburton, as administrator of Alfred B. C. De Bose, the sum of twenty-five hundred and forty-nine (2,549) dollars and twenty cents, which were adjudged to him for his damages, with interest on said damages at 8 per centum per annum from the 1st day of May, A. D. 1867, until paid, together with the sum of seventy-one dollars and 35 cents for costs sustained in the suit: You are therefore commanded, as often before we have commanded you, that of the goods and chattels, lands and tenements, which were of the said Alfred B. C. De Bose at the time of his death remaining in the hands of the said William H. Halliburton, administrator, if so much thereof he hath, you cause to be made the damages and interest aforesaid, together with the costs aforesaid, so that you have the same before the clerk of our said court, at his office in the city of Little Rock, on the second Monday of April next, to be paid over to said plaintiff,
31 and then and there certify how you have executed this writ.

In testimony whereof Hon. Salmon P. Chase, Chief Justice of the Supreme Court of the United States, has caused the seal of said circuit court to be hereunto affixed this 1st day of December, A. D. 1868, and in the 93d year of our Independence.

[L. S.] Attest: CHA'S P. REDMOND,
Clerk.

On which writ the marshal made return as follows, to wit:

I have this day levied upon the following-described real estate of defendant herein, to wit:

Sec. 15, T. 6 S., r. west,		640	acres.
" 16, " " " "	"	640	"
E. ½ S. E. ¼ sec. 9, t. 6 S, R. 6	west,	80	acres.
W. ½ S. E. ¼ sec. 10, t. 6 S, R. 6	"	80	"
W. E. ¼ sec. 35, t. 6 S, R. 3	"	160	"

ISAAC C. MILLS,
U. S. Marshal E. D. A.
By R. H. M. MILLS,
Deputy.

United States marshal's sale.

AUGUSTE GAUTIER
vs.
W'M H. HALLIBURTON, ADM. OF A. B. C. De Bose.

32 UNITED STATES OF AMERICA,
Eastern District of Arkansas:

By virtue of a writ of execution to me directed by the United States circuit court for the eastern district of Arkansas, I shall sell at the front entrance to the circuit court rooms of Arkansas County, at De Witt, Arkansas, on Wednesday, March 3d, 1869, at 10 o'clock a. m., the following described real estate, to wit:

Sec. 15, t. 6 south, range	6	west, 640	acres.
" 16, " " "	"	" " 640	"
E. ½ sec. ¼ sec. 9, t. 6,	"	" " 80	"
W. ½ S. E. ¼ sec. 10, t. 6., r. 6. W.,	"	" 80	"
W. E. ¼ sec. 35, t. 6. S., r. 3 west,		160	"

In all 1,600 acres, all in Arkansas County, Arkansas, levied on as the

property of the estate of the above-named A. B. C. De Bose, deceased, now in the hands of his said administrator, unadministered, and will be sold to satisfy debt, damages, and costs in the above-entitled case; each tract sold separately.

Terms, cash.

ISAAC C. MILLS,
U. S. Marshal for East. Dist. Ark.,
By R. H. MILLS,
Deputy.

Printer's fee, $8.00.

33 In accordance to the within writ of fieri facias, I proceeded to levy upon the following described real estate, to wit:

Sec. 15, township 6 S., range 6 west, containing 640 acres; sec. 6, township 6 S., range 6 west, containing 640 acres; E. ½ of S. E. ¼ sec. 9, township 6 S., range 6 west, 80 acres; W. ½ S. E. ¼ sec. 10, township 6 S., range 6 west, 80 acres; N. E. ¼ sec. 35, township 6 S., range 3 west, 160 acres; in all 1,600 acres, all in Arkansas County, State of Arkansas, levied upon as the property of the estate of A. B. C. De Bose, dec'd, and proceeded to give notice that I would sell the same on the 3d day of March, 1869, at the door of the court-house of Arkansas County, in the town of DeWitt, by advertising the same in a newspaper called the Jefferson Republican, published in the city of Pine Bluff, Arkansas, "weekly;" and I further certify that I did sell the same, when T. D. W. Yanley became the purchaser of the whole of sections 15 and 16 at the price of $92\frac{29}{100}$ dollars per tract of 40 acres, amounting in the aggregate to the sum of twenty-nine hundred and fifty-three dollars ($2,953\frac{28}{100}$), and W. F. Newton became purchaser of the W. ½ S. E. ¼ sec. 10, township 6 S., range 6 west, 80 acres, at the price of $60\frac{40}{100}$ per tract of 40 acres, amounting to, in the aggregate, $120\frac{80}{100}$ dollars. No bid being made for E. ½ S. E. ¼ sec. 9, or N. E. ¼ sec. 35, township 6 S., range 3 west, this is returned unsold.

Total amount of sales, $3,074\frac{08}{100}$.

34 ISAAC C. MILLS,
United States Marshal,
By R. H. M. MILLS,
Dep'ty U. S. Marshal.

Received of I. C. Mills, marshal, the sum of twenty-nine hundred and twenty-three $\frac{13}{100}$ dollars in full of within execution.

T. D. W. YANLEY,
Att'y for Pl'ff.

Returned & filed.
Feb'y 10th, 1870.

CHA'S P. REDMOND,
Clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Charles P. Redmond, clerk of the circuit court of the United States for the eastern district of Arkansas in the eighth circuit, hereby certify that the foregoing writings annexed to this certificate are true, correct, and compared copies of their original on file and remaining of record in my office, and constitutes a full, true, and complete transcript of the records and proceedings in case of Auguste Gautier vs. W. H. Halliburton, adm. of A. B. C. De Bose.

In witness whereof I have hereunto set my hand and the seal of

said court this second day of May, in the year of our Lord one
35 thousand eight hundred and seventy, and of the Independence of the United States of America the *twen*ty-fourth.

Attest:

CHA'S P. REDMOND,
Clrk.

(Endorsed:) A. 83. T. D. W. Yanley vs. W'm D. Lavender et al. Filed May 7th, 1870. E. N. Wiley, clerk.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

Isaac C. Mills, United States marshal in and for the eastern district of Arkansas, to all to whom these presents shall come, greeting:

Whereas on the first day of December, A. D. 1868, there was issued from the office of the clerk of the circuit court of the United States for the eastern district of Arkansas, signed by said clerk, and attested by the seal of said court, a certain pluries writ of fieri facias, in the name of the President of the United States, and to me as such marshal directed, and which came to my hands on the first day of December, 1868, at the hour of 10 a. m. of said day, the recitals of which writ is in the words as follows, to wit:

36 "Whereas Auguste Gautier, on the first day of May, A. D. 1867, in our circuit court of the United States for the eastern district of Arkansas, hath recovered against William H. Halliburton, administrator *administrator* of Alfred B. C. De Bose, the sum of twenty-five hundred and forty-nine dollars and twenty cents, which were adjudged to him for his damages, with interest on said damages at the rate of eight per centum per annum from the first day of May, A. D. 1867, until paid, together with the sum of seventy-one dollars and thirty-five cents for costs sustained in the suit: You are therefore commanded, as often before we have commanded you, that of the goods and chattels, lands and tenements, which were of the said Alfred B. C. De Bose at the time of his death remaining in the hands of the said William H. Halliburton, administrator, if so much thereof he hath, you cause to be made the damages and interest aforesaid, together with the costs aforesaid, so that you have the same before the clerk of our said court at his office in the city of Little Rock, on the second Monday of April next, to be paid over to the said plaintiff; and then and there certify how you have executed this writ."

And in obedience to the command of said writ, and in order that
37 the same might be executed and satisfied, I did afterwards, to wit, on the first day of December, A. D. 1868, execute the same in said eastern district, by then and there levying upon and seizing the following described property as the property of the said , to wit: Section fifteen (15) township six (6) south, range six (6) west, containing 640 acres; and sections sixteen (16) township (6) six south, range (6) six west, containing 640 acres; and east half of southeast quarter section nine (9) township six (6) south, range six west, containing 80 acres; and west half of southeast quarter section ten (10) township (6) six south, range six west, containing 80 acres; and northeast quarter section thirty-five (35) township (6) six south, range three west, containing 160 acres; in the aggregate 1,600 acres, lying and being in the county of Arkansas and eastern district of Arkansas.

And whereas afterwards, to wit, on the sixth day of February, A. D.

1869, I advertised the said tracts of land and appurtenances for sale, according to law, by an advertisement made in the Jefferson County Republican, a newspaper printed and published in Pine Bluff, and designated as the legal paper for said county of Arkansas in said eastern district, to be sold at the door of the county court-rooms of Arkansas County, at De Witt, on Wednesday, the third day of March, A.
38 D. 1869, during the hours prescribed by law for judicial sales; at which time and place I attended and offered said lots and parcels of land and appurtenances for sale to the highest bidder, when and where T. D. W. Yanley bid for the said sections numbered fifteen (15) and sixteen (16) township six (6) south, range six (6) west, containing in the aggregate twelve hundred and eighty acres (1,280) lying in the said county of Arkansas and said eastern district, for the price and sum of ninety-two dollars and twenty-nine cents per tract of 40 acres each, as the same was respectively sold, and which bid in the aggregate amounted to the sum of twenty-nine hundred and fifty-three dollars and twenty-eight cents ($2,953\frac{28}{100}$;) and he being the highest and best bidder therefor, the same was struck off to him, and he then and there became the purchaser thereof.

Now, therefore, know ye, that I, the said Isaac C. Mills, as marshal as aforesaid, in consideration of the sum of twenty-nine hundred and fifty-three $\frac{28}{100}$ dollars, as aforesaid, to me in hand paid by the said T. D. W. Yanley, the receipt whereof is hereby acknowledged, have bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto the said T. D. W. Yanley, all the interest of the said Alfred B. C. De Bose, dec'd, at the time of the rendition of said judgment, issuance of said execution, or at any time thereafter,
39 in and to the said above mentioned and described tract or parcels of land and appurtenances thereto, to have and to hold the same to him and his legal representatives forever.

And I, the said Isaac C. Mills, as such marshal, do covenant with the said T. D. W. Yanley that in levying said execution and in everything the same concerning, I have complied with, observed, and obeyed all the rules and regulations in law for executions, making sales, and conveying the same, as far as the office of marshal and the writ under which I sold and authorized me to do.

In witness whereof I have hereunto set my hand and seal this 12th day of April, A. D. 1869, at Little Rock, in the eastern district of Arkansas.

[SEAL.]

ISAAC MILL,
United States Marshal for Eastern District of Ark.

ISAAC C. MILLS, AS MARSHAL,
vs.
T. D. W. YANLEY.
} Deed acknowledged.

Be it remembered that on this day Isaac C. Mills, United States marshall in and for the eastern district of Arkansas, appeared here in open court in proper person, and acknowledged that as such
40 marshal he had, for the consideration and purposes therein mentioned and set forth, executed a certain deed *a certain deed* of conveyance, now here to the court shown, in favor of T. D. W. Yanley, for the following property, to wit: Section numbered fifteen (15) and sixteen (16), township six (6) south, range six (6) west, containing in the aggregate twelve hundred and eighty acres (1,280), lying in said county of Arkansas and said eastern district of Arkansas, levied on and sold by

said marshal under and by virtue of an execution issued upon a judgment rendered by the circuit court of the United States in and for the eastern district of Arkansas in favor of Auguste Gautier against William H. Halliburton, adm'r of Alfred B. C. De Bose, as the property of the said Alfred B. C. De Bose, dec'd.

And it is ordered by the court here that a copy of this acknowledgment be indorsed on said deed and certified by the clerk under the seal of this court, to the end that the same may be entitled to record.

UNITED STATES OF AMERICA,
Eastern District of Arkansas:

I, Charles P. Redmond, clerk of the circuit court of the United States in and for the district aforesaid, do hereby certify that the above
41 acknowledgment is a true and complete copy thereof from the record of proceedings of said court on the 26th day of April, A. D. 1869, as the same appears thereon.

In testimony whereof I have hereunto set my hand as such clerk, and affixed the seal of said court this 26th day of April, A. D. 1869.

[L. S.] CHA'S P. REDMOND,
Clerk U. S. Circuit Court,
Eastern District Ark.

STATE OF ARKANSAS,
County of Arkansas, ss:

I, Edmund R. Wiley, county clerk and ex-officio recorder in and for the county and State aforesaid, do hereby certify that the annexed and foregoing deed, with $2.50 United States revenue stamps thereto affixed and cancelled, was filed for record in my office on the 28th day of March, A. D. 1870, at 3 o'clock p. m., and that the same is now duly recorded, with the acknowledgment thereto, in record-book R, pages 11, 12, 13, 14, & 15.

In testimony whereof I have hereunto affixed the seal of my office, at office, this the 26th day of April, A. D. 1870.

[L. S.] E. R. WILEY,
Clerk & Ex-officio Recorder.
By A. C. WILEY, *D. C.*

42 (Endorsed:) B., 83. U. S. marshal. To T. D. W. Yanley, deed. T. D. W. Yanley vs. W'm D. Lavender et al. De Bose lands. Filed March 28th, 1870, at 3 o'clock p. m.

E. R. WILEY, *Clerk,*
By A. C. WILEY, *D. C.*

Filed May 7th, 1870.

E. R. WILEY, *Clerk.*

In the circuit court of Arkansas County, at May term, 1870.

THOMAS D. YANLEY, PLAINTIFF,
v.
W'M D. LAVENDER, ROBERT M. ANDERSON, & John Ross, and James J. Pace, defendants. } Ejectment.

Be it remembered that during the progress of the trial of this cause, which was submitted to the court sitting as a jury, neither party
43 requiring a jury, upon an agreed statement of facts filed herein

the said plaintiff moved the court to declare its opinion of the law applicable to this case upon the facts, stated to be:

1st. That said plaintiff by his said purchase thereof at marshal's sale, and the deed of conveyance therefor by said marshal to him in execution of the judgment of said circuit court of the United States, s't forth in the agreed statement of facts, became and is entitled by law to recover in this action the possession of so much of the lands and premises in controversy as were held and occupied at the time of the commencement of this suit by the defendants, Lavender, Ross, and Pace, being all of said lands and premises except the two eighty-acre tracts claimed by said Anderson and described in his answer, together with damages for the detention thereof, according to the value of the rents of the same as agreed on.

2d. That the foregoing proposition of law is applicable to the two tracts of said land described in the answer of the defendant Anderson, and that as to said two tracts of land the following further proposition is the law applicable to this case upon the facts stated, namely, that the title, right, or claim of said Alfred B. C. De Bose, or that of his legal representatives and heirs succeeding him, was not divested by the
44 summary cancellation of the contract of purchase under and by virtue of which he became the owner of said two tracts of land and lawfully acquired and held the possession thereof.

And the said defendants on their part asked the court to declare its opinion of the law applicable to this case upon the facts agreed on to be the converse of the two foregoing propositions asked for by the plaintiff.

Whereupon the court declared the opinion of the judge of this court to be in favor of the first proposition so asked for by said plaintiff as law applicable to this case upon the facts stated; but, following what appeared to be the ruling of the supreme court of this State upon the question presented by said instructions, refused to declare either of said propositions asked for by said plaintiff to be law applicable to this case upon the facts stated and agreed on, and declared the converse of those propositions asked for by said defendants to be law applicable to this case upon said agreed facts.

To which opinion, judgment, and proceeding of the court in so refusing to declare said propositions asked by said plaintiff, or either of them, to be law applicable to this case upon said facts, and in declaring the converse of both of said propositions asked for by said defend-
45 ants to be the law applicable to this case upon said agreed facts, said plaintiff excepted at the time, and now tenders this his bill of exceptions in respect thereof, and prays that the same may be signed and sealed by the judge hereof and ordered to be filed and made a part of the record of this cause, which is accordingly done this 7th day of May, A. D. 1870.

HENRY B. MORSE, [SEAL.]
Judge.

(Endorsed:) 83. T. D. W. Yanley vs. W'm D. Lavender et al. Ejectment. Bill of exceptions. Filed May 7th, 1870. E. R. Wiley, clerk.

STATE OF ARKANSAS,
County of Arkansas:

Be it remembered that at a circuit court begun and held at the court-house in the town of De Witt, in said county, on Monday the second day of May, A. D. 1870, it being the time and place appointed by law for holding said court, before Hon. Henry B. Morse, judge of the tenth

judicial circuit in said State of Arkansas, the following proceedings were then and there had, to wit:

46 On the 4th day of May, 1870, being yet a day of the spring term, 1870, the following further proceedings were had, to wit:

T. D. W. YANLEY
vs.
WILLIAM D. LAVENDER, ADM. OF A. B. C. DE BOSE et al. } 83. Complaint.

Comes defendant Robert M. Anderson, and leave of the court being, on motion, granted, files herein his separate answer to plaintiff's complaint.

And on the 6th day of May, it being yet a day of said spring term, 1870, the following further proceedings were had, to wit:

T. D. W. YANLEY
vs.
WILLIAM D. LAVENDER ET AL. } 83. Complaint.

Comes said plaintiff, and leave being, on motion, granted, amends his complaint herein in this behalf.

And on the 7th day of May, A. D. 1870, it being yet a day of said spring term, 1870, the following further proceedings were amongst others then and there had, to wit:

47 THOMAS D. W. YANLEY
vs.
WILLIAM D. LAVENDER, ROBERT M. ANDERSON, JOHN ROSS, and JAMES F. PACE. } 83. Ejectment.

And now on this day come the said defendants by their attorneys, Garland and Nash and Bradshaw, and filed their answer to the complaint in this cause, and said plaintiff by his attorneys, Watkins, & Rose, comes also, and said parties file their agreed statement of facts in this case, and Exhibits A & B therein referred to and made part thereof; and neither party requiring a jury, this cause is by consent of parties submitted to the court sitting as a jury for trial thereof upon the pleadH. ings and said agreed statement of facts, and after hearing the same and the argument of counsel, the court doth find in favor of the said defendants. It is therefore ordered by the court that said defendants go hence hereof without day, and have and recover of said plaintiffs all their costs in and about this suit expended. And pending the trial of this cause, said plaintiff excepted to sundry rulings and decisions of the court, and now tenders his bill of exceptions in respect thereof,
48 which is signed and sealed and filed and made a part of the record of this cause. Whereupon said plaintiff prays an appeal in this cause to the supreme court, and it is ordered by the court that such appeal be, and the same is hereby, granted and allowed.

Bill of costs.

County tax, $ .50.
Clerk's fees, $5.00—paid by plaintiff.
" $3.15.
Sheriff's fees, $5.00—paid by plaintiff.
" $2.75.

STATE OF ARKANSAS,
County of Arkansas:

I, Edmund R. Wiley, clerk of the circuit court in and for the county of Arkansas and State of Arkansas aforesaid, do hereby certify that the foregoing sixty-two pages and this page contain a true, faithful, and compared copy of the papers on file and the orders of the court in the case of Thomas D. W. Yanley versus W'm D. Lavender, adm'r, et al., in our circuit court, as the same appear of record. And I further certify that the annexed bill of costs is true and correct.

In testimony whereof I, Edmund R. Wiley, clerk as aforesaid,
49 have hereunto set my hand and affixed the seal of my office this 24th day of May, A. D. 1870.

[L. S.]

E. R. WILEY, *Clerk*,
By A. C. WILEY, *D. C.*

And afterwards, at the December term, A. D. 1870, of the supreme court of the State of Arkansas, to wit, on the 30th day of December, A. D. 1870, the following proceedings were had in said court in this cause, to wit:

T. D. W. YANLEY, APPELLANT,
v.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

Come the parties by their respective attorneys, and this cause is submitted upon briefs, and by the court taken under advisement.

And afterwards, at the June term of said court, to wit, on the 22d day of June, A. D. 1871, the following proceedings were had, to wit:

T. D. W. YANLEY, APPELLANT,
v.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

50 Come the parties by their attorneys, and by leave of the court file the agreement of counsel herein.

And afterwards, to wit, on the 3d day of July, A. D. 1871, it being yet a day of said June term, A. D. 1871, the following further proceedings were had in said cause, to wit:

T. D. W. YANLEY, APPELLANT,
vs.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

This day comes said appellant by his attorney and files his motion to vacate the submission of this cause, with leave to apply to the circuit court of Arkansas County for such amendment as will make the agreed

judicial circuit in said State of Arkansas, the following proceedings were then and there had, to wit:

46 On the 4th day of May, 1870, being yet a day of the spring term, 1870, the following further proceedings were had, to wit:

T. D. W. YANLEY
vs.
WILLIAM D. LAVENDER, ADM. OF A. B. C. DE BOSE et al. } 83. Complaint.

Comes defendant Robert M. Anderson, and leave of the court being, on motion, granted, files herein his separate answer to plaintiff's complaint.

And on the 6th day of May, it being yet a day of said spring term, 1870, the following further proceedings were had, to wit:

T. D. W. YANLEY
vs.
WILLIAM D. LAVENDER ET AL. } 83. Complaint.

Comes said plaintiff, and leave being, on motion, granted, amends his complaint herein in this behalf.

And on the 7th day of May, A. D. 1870, it being yet a day of said spring term, 1870, the following further proceedings were amongst others then and there had, to wit:

47 THOMAS D. W. YANLEY
vs.
WILLIAM D. LAVENDER, ROBERT M. ANDERSON, JOHN ROSS, and JAMES F. PACE. } 83. Ejectment.

And now on this day come the said defendants by their attorneys, Garland and Nash and Bradshaw, and filed their answer to the complaint in this cause, and said plaintiff by his attorneys, Watkins, & Rose, comes also, and said parties file their agreed statement of facts in this case, and Exhibits A & B therein referred to and made part thereof; and neither party requiring a jury, this cause is by consent of parties submitted to the court sitting as a jury for trial thereof upon the pleadH. ings and said agreed statement of facts, and after hearing the same and the argument of counsel, the court doth find in favor of the said defendants. It is therefore ordered by the court that said defendants go hence hereof without day, and have and recover of said plaintiffs all their costs in and about this suit expended. And pending the trial of this cause, said plaintiff excepted to sundry rulings and decisions of the court, and now tenders his bill of exceptions in respect thereof, which is signed and sealed and filed and made a part of the rec-
48 ord of this cause. Whereupon said plaintiff prays an appeal in this cause to the supreme court, and it is ordered by the court that such appeal be, and the same is hereby, granted and allowed.

Bill of costs.

County tax, $ .50.
Clerk's fees, $5.00—paid by plaintiff.
" $3.15.
Sheriff's fees, $5.00—paid by plaintiff.
" $2.75.

STATE OF ARKANSAS,
County of Arkansas:

I, Edmund R. Wiley, clerk of the circuit court in and for the county of Arkansas and State of Arkansas aforesaid, do hereby certify that the foregoing sixty-two pages and this page contain a true, faithful, and compared copy of the papers on file and the orders of the court in the case of Thomas D. W. Yanley versus W'm D. Lavender, adm'r, et al., in our circuit court, as the same appear of record. And I further certify that the annexed bill of costs is true and correct.

In testimony whereof I, Edmund R. Wiley, clerk as aforesaid,
49 have hereunto set my hand and affixed the seal of my office this 24th day of May, A. D. 1870.

[L. S.]

E. R. WILEY, *Clerk*,
By A. C. WILEY, *D. C.*

And afterwards, at the December term, A. D. 1870, of the supreme court of the State of Arkansas, to wit, on the 30th day of December, A. D. 1870, the following proceedings were had in said court in this cause, to wit:

T. D. W. YANLEY, APPELLANT,
v.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

Come the parties by their respective attorneys, and this cause is submitted upon briefs, and by the court taken under advisement.

And afterwards, at the June term of said court, to wit, on the 22d day of June, A. D. 1871, the following proceedings were had, to wit:

T. D. W. YANLEY, APPELLANT,
v.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

50 Come the parties by their attorneys, and by leave of the court file the agreement of counsel herein.

And afterwards, to wit, on the 3d day of July, A. D. 1871, it being yet a day of said June term, A. D. 1871, the following further proceedings were had in said cause, to wit:

T. D. W. YANLEY, APPELLANT,
vs.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

This day comes said appellant by his attorney and files his motion to vacate the submission of this cause, with leave to apply to the circuit court of Arkansas County for such amendment as will make the agreed

statement of facts appearing in the transcript sent here a part of the record of this cause, in accordance with the intention of the parties; on consideration whereof it is ordered by the court that said motion be granted, and said submission is accordingly set aside.

And afterwards, at the December term, A. D. 1871, of said supreme court of the State of Arkansas, to wit, on the 18th day of December, A. D. 1871, the following proceedings were had in said court in this cause, to wit:

51 T. D. W. YANLEY, APPELLANT,
vs.
W'M D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

Come the parties by their respective attorneys, and on motion this cause is submitted on briefs and by the court taken under advisement.

And afterwards at the December term, A. D. 1872, of said supreme court of the State of Arkansas, to wit, on the 16th day of May, 1872, the following proceedings were had in said court in this cause, to wit:

THOMAS D. W. YANLEY, APPELLANT,
vs.
WILLIAM D. LAVENDER, ROBERT M. ANDERSON, John Ross, and James J. Pace, appellees. } Appeal from Arkansas c't c't.

This cause having been heretofore submitted to the court on oral arguments and briefs of the respective counsel, and by the court taken under advisement, and the court having considered of and concerning the said alleged errors of the court below, doth consider that the sale made by the marshal of the United States court for the eastern district of Arkansas of the land in controversy, under an execution
52 against the administrator of Alfred B. C. Du Bose, deceased, issued out of the United States circuit court for the eastern district of Arkansas, was void for the want of power in said court under the law to issue said process against the estate of a deceased person and in such manner to interfere with the regular administration of such estates in the proper courts of the State, and that the marshal's deed to the land in controversy, offered in evidence in the court by the appellant, afforded no evidence of title to the land in controversy, for the reason aforesaid, and that the judgment below is in all things in accordance with law.

Wherefore it is further considered and adjudged that the judgment of the court below be, and the same is in all things, affirmed, and that the appellees do have and recover of and from said appellant all their costs in and about this appeal paid, laid out, and expended, and have execution thereof.

And afterwards, to wit, on the 24th day of May, A. D. 1872, it being yet a day of said December term, A. D. 1872, the following further proceedings were had in said court in this cause, to wit:

53 T. D. W. YANLEY, APPELLANT,
vs.
W. D. LAVENDER ET AL., APPELLEES. } Appeal from Arkansas c't c't.

Comes said appellant by his attorneys, and by leave of court files

his motion for allowance of a writ of error in this cause to the Supreme Court of the United States, and his assignment of errors herein; also, his bond conditioned according to law in the penal sum of two hundred and fifty dollars; whereupon said writ of error is allowed and said bond approved.

54 STATE OF ARKANSAS,
Supreme Court, sct.:

I, N. W. Cox, clerk of the supreme court of the State of Arkansas, do hereby certify that the above and foregoing fifty-three pages of manuscript contain a full, true, and complete copy of the record and proceedings had thereon in the supreme court of the State of Arkansas, as the same are now of record and on file in my office.

In testimony whereof I, N. W. Cox, clerk of said supreme court, hereto set my hand and affix the seal of said court at my office, in the city of Little Rock, this 29th day of May, A. D. 1872.

[SEAL.] N. W. COX,
Clerk.

Costs in sup. court of Ark	$22 65
Cost of transcript	25 15
	$47 80

(Indorsement on cover:) No. 378. Thomas D. W. Yanley, plaintiff in error, *vs.* William D. Lavender, Robert M. Anderson, John Ross, & James J. Pace. Arkansas sup. c't. Filed 20 December, 1872.

Supreme Court of the United States.

No. 378.

THOMAS D. W. YONLEY, Plaintiff,

vs.

WILLIAM D. LAVENDER, et als., Defendants.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

Supreme Court of the United States.

NO. 378.

THOMAS D. W. YONLEY,
Plaintiff,

vs.

WILLIAM D. LAVENDER, et als.
Defendants.

IN ERROR TO THE SUPREME COURT OF ARKANSAS.

The plaintiff in error brought ejectment in the circuit court of Arkansas county against the defendants in error.

Defendant Anderson answered, setting up a title to a part of the lands, which is not controverted.

Lavender, Ross, Pace and Anderson united in an answer denying that plaintiff had any title.

The parties agreed on the following statement of facts:

"That in October, 1869, William H. Halliburton, the administrator of Albert B. C. DuBose, deceased, was removed by the probate court of said county of Arkansas, and the defendant, William D. Lavender, was appointed by said probate court administrator *de bonis non* of the estate of said DuBose, who has ever since continued to be, and is such administrator. That at the time of the commencement of this suit, the defendants were in possession of the lands and premises in said complaint mentioned; the said Ross and Pace holding such possession under and by lease from said Lavender, as such administrator. That on the 3d day of March, 1869, the plaintiff purchased said lands and premises

at a marshal's sale thereof as hereinafter stated. That on the 3d day of March, 1869, the plaintiff purchased said lands and premises at a marshal's sale thereof upon execution of a judgment of the circuit court of the United States for the eastern district of Arkansas, against the administrator of said estate."

A transcript of that judgment, and the subsequent proceedings on it, were made a part of the agreement. We have omitted so much of the agreement as has no bearing on the case as it stands in this court. *Tr. p. 6.*

It appeared that on the 26th of January, 1867, one Gautier brought a suit at law in the said circuit court of the United States against the said Halliburton as the original administrator of DuBose, who made an unavailing defense, the suit resulting in a judgment against him as such administrator, on the 1st day of May, 1867. Execution issued May 20th, 1867, to be levied "of the goods and chattels, lands and tenements which were of the said Alfred B. C. DuBose at the time of his death, remaining in the hands of said William H. Halliburton, administrator, administered, if so much thereof he hath." Alias execution was issued on the 18th of June, 1868, and *a pluries* writ on the 1st of December, 1868; the latter was levied on the lands in controversy, and they were advertised and sold on the 3d of March, 1869, and the marshal executed a deed to the plaintiff. April 12, 1869. *Tr. p. 18.*

This was all the evidence. The cause was submitted to the court sitting as a jury. The plaintiff asked this declaration of law.

"That said plaintiff by his said purchase thereof at marshal's sale, and the deed of conveyance made therefor by said marshal to him in execution of the judgment of said circuit court of the United States set forth in the agreed statement of facts, became and is entitled by law to recover in this action the possession of so much of the lands and premises in controversy as were held and occupied at the time

of the commencement of this suit by the defendants, Lavender, Ross and Pace, being all of said lands and premises except the two eighty acre tracts claimed by said Anderson, and described in his answer, together with damages for the detention thereof, according to the value of the rents of the same as agreed on." *Tr. p. 21.*

The Court refused this, and gave judgment for the defendants. Plaintiff appealed to the supreme court of Arkansas, which adjudged "that the sale made by the marshal of the United States court for the the eastern district of Arkansas of the land in controversy under an execution against the administrator of Alfred B. C. DuBose, deceased, issued out of the United States circuit court for the eastern district of Arkansas, was void for the want of power in said court to issue said process against the estate of a deceased person, and in such manner to interfere with the regular administration of such estates in the proper courts of the State, and that the marshal's deed to the land in controversy, offered in evidence in the court by the appellant, afforded no evidence of title to the land in controversy for the reason aforesaid." *P. 24.*

ASSIGNMENT OF ERRORS.

Comes the said plaintiff in error, and says that in the judgment and proceedings in the court below there is manifest error in this:

1. *That the court erred in holding that the sale made by the United States marshal under execution issued out of said United States circuit court to said plaintiff, was void for want of power in said circuit court to issue that process against the estate of a deceased person, or against the said Lavender as administrator of said DuBose.*

2. *That the the court erred in holding that the marshal's deed made in pursuance of such execution and sale, was void for the reason aforesaid.*

Wherefore said plaintiff prays judgment of this court, etc.

BRIEF.

The two assignments may be treated substantially as one.

The precise language of the Arkansas statutes of administration is not in question here. They are no wise anomalous. Letters are granted by the probate court, which has a general superintendence and jurisdiction of all matters pertaining to estates. Claims are proved and filed in the probate court, and are there allowed or rejected. If allowed, they are paid in an established order. Still an administrator may be sued as such in the circuit court, a court having jurisdiction of suits of all kinds, where the amount in controversy exceeds a certain sum. If judgment in such case is rendered against an administrator, no further proceedings against the administrator are necessary. He must take notice of the claim and pay it in due course of administration. The judgment, however, does not establish the existence of assets. *Gould's Dig., ch. 4, Outlaw v. Yell, 5 Ark., 468; Ryan v. Lemon, 7, Id. 78; McCoy v. Jackson, 21, Id. 472.*

The provisions of the statute bearing directly on the subject are as follows:

"All actions commenced against any executor or administrator after the death of the testator or intestate, shall be considered demands legally exhibited against such estate from the time of serving the original process on the executor or administrator, and shall be classed accordingly." *Gould's Dig. ch. 4, sec. 101.*

"All demands against any estate shall be paid by the executor or administrator in the order in which they are classed; and no demand of one class shall be paid until the claims of all previous classes are satisfied; and if there be not sufficient to pay the whole of any one class, such demands shall be paid in proportion to their amounts, *which apportionment shall be made by the court of probate.*" *Id. sec. 120.*

It may be of interest or utility to examine the decisions of the court of last resort of the state on this question.

In *Adamson v. Cummins, 5 Eng.* (9 Ark.) *541*, the question being on execution issued from a state court, it was held that a judgment obtained in the circuit court against an administrator, as such, cannot be executed until the estate is settled in the probate court; but that an execution issued on such judgment before it is ascertained that there are no assets to pay it, *is irregular, not void;* that if an administrator permits a sale under such execution to a person who has no notice of the irregularity of its issue, such sale will not be set aside on petition, though the execution *might have been quashed on motion*.

This decision was approved in *Hornor v. Hanks, 22 Ark. 573*. In that case the execution was issued out of the federal court, but this was held not to make the case different from what it would have been if it had proceeded from a state court; but it was further held that a purchase made by the judgment creditor under execution against an administrator as such, of lands belonging to the estate of the intestate was voidable, and would be cancelled by a court of chancery, on the terms that the amount due on the judgment should be paid; or that so much of the lands as might be necessary to pay the judgment should be sold. It was also held that if the execution purchaser had resold any of the lands, such a sale would not be interfered with, but that the execution purchaser would be required to account for the proceeds of his sale.

As the appellant in the case at bar was not the execution creditor, and this case, unlike that of *Hornor v. Hanks*, was a case at law, the decisions of the supreme court of Arkansas, were, as yet, clearly in his favor, when this cause was submitted to that court. The record in this case having been filed in this court before the adoption of the recent rule on the subject, does not contain the opinion delivered in the court below, which will be found in the *26th Ark. p. 252*.

In that opinion, the court in effect overrules the doctrines previously held on the subject. The closing sentence fitly sums up what the court adjudicates upon this case: "And

as the process under which the appellant purchased, *showed fully upon its face that it was without force and authority of law*, he should have taken notice that a purchase and deed thereunder was *invalid and worthless.*"

We may add that perhaps no court has gone so far in a general way in upholding execution sales, though grossly irregular, as the supreme court mentioned. See *State Bank v. Newton, 13 Ark., 304; Newton v. State Bank, 14, Id. 15; S. C. 22, Id. 28; Byers v. Fowler, 12, Id. 272.*

It might be conceded that the execution was irregular, that it might have been recalled or quashed on motion, without in any manner affecting the strength of the appellant's cause. Manifestly the opinion of the court below expressed the only ground on which its judgment could be based; the true question being whether the execution was *on the face of it illegal. Lock v. Sellwood, 1 Q. B. 736.*

The jurisdiction of the federal court to render the judgment, being granted, it is extremely difficult to maintain the position that its process, issued for the purpose of enforcing the judgment, was void for the want of power.

In *Riggs v. Johnson County, 6 Wall 187*, this court said: "The express determination of this Court is that the jurisdiction of a court *is not exhausted by the rendition of a judgment, but continues until that judgment shall be satisfied.* Consequently, a writ of error will lie when a party is aggrieved in the foundation, proceedings, judgment or execution of a suit in a court of record. *Process subsequent to judgment is as essential to jurisdiction as process antecedent to judgment, else the judicial power would be incomplete, and entirely inadequate to the purposes for which it was conferred by the constitution.*" See also, *Ableman v. Booth, 21 How. 516; Dodge v. Woolsey, 18 tr. 346; Green v. Creighton, 23 Id. 106.*

If this jurisdiction continues until the "judgment shall be satisfied," it follows that no other court can interfere with that jurisdiction. Here is simply a continuance of the power,

and there is an end of the matter. If error intervene there is a remedy by a direct proceeding. In *Peck v. Jenness, 7 How. 624*, the court said: "It is a doctrine of law too long established to require a citation of authorities, that where a court has jurisdiction, it has a right to decide any question which occurs in the cause; and whether its decisions be correct or otherwise, its judgment, till reversed, is regarded as binding in every other court; and the right of a plaintiff to prosecute his suit in it having once attached, the right cannot be arrested or taken away by proceedings in another court. These rules have their foundation not merely in comity, but in necessity."

It is submitted that there has been no surrender of power in the federal courts by the process acts. The act of *May 19, 1828, 4 St. 281*, relates only to the *form* of the process. By the act of *August 1, 1842, 5 St. 499*, the former act was applied to such states as had been created after its passage. It does not follow from the uniformity thus prescribed, in mere matters of form, that the power of the federal courts was intended, in the smallest degree, to be transferred to the state courts, or to be abdicated.

In *Snydam v. Broadnax, 14 Pet. 75*, in speaking of the judiciary act, the court said: "It was certainly intended to give to suitors having a right to sue in the circuit court, remedies co-extensive with their rights."

In *Hyde v. Stone, 20 How. 175*, the court said: "In many cases state laws form a rule of decision for the courts of the United States, and the forms of proceeding in these courts have been assimilated to those of the states, either by legislation enactment or by their own rules. But the courts of the United States are bound *to proceed to judgment, and to afford redress* to suitors before them in every case to which their jurisdiction extends. *They cannot abdicate their authority or duty in any case in favor of another jurisdiction.*"

In *Boyle v. Zacharie, 6 Pet. 658*, Strong, J., said: "But writs and executions issuing from the courts of the United

States, in virtue of these provisions, are not controlled or controllable in their general operation and effect *by any collateral regulations and restrictions which the state laws have imposed upon state courts to govern them in the actual use, suspension or superseding of them. Such regulations and restrictions are exclusively addressed to the state tribunals, and have no efficacy in the courts of the United States, unless adopted by them.*" See also *Shelby v. Bacon, 10 How. 70.*

In *Palmer v. Allen, 7 Cranch, 550*, Palmer, a deputy marshal of the United States, having a writ against Allen, committed him in default of bail, without a *mittimus* from a magistrate as required by the state law. Allen sued for false imprisonment. The court said: "It was supposed that the law of the United States which enacts that the *form* of writs, executions and other processes, and the forms and modes of proceeding in suits of common law shall be the same as are now used in the state courts respectively, gives efficacy to the laws of Connecticut on this subject (requiring a *mittimus*), and imposes on the officers of the United States an obligation to conform their conduct to the provisions of these laws. *But this court are unanimously of a different opinion.*"

In *Wayman v. Southard, 10 Wheat, 23*, the court said: "The constitution concludes its enumeration of granted powers with a clause authorizing congress to make all laws necessary for carrying into execution the foregoing powers, and all other forms vested by this constitution in the government of the United States, or in any department or officer thereof. The judiciary department is invested with jurisdiction in certain specified cases, in all of which it has power to render judgment.

"That a power to make laws laws for *carrying into execution* all the judgments which the judicial department has power to pronounce, is expressly conferred by this clause, seems to be one of those plain propositions which reasoning cannot render plainer."

Then after showing how this power has been exercised in the passage of the judiciary act, the court said: "The jurisdiction of a court is not exhausted by the rendition of its judgment, but continues until the judgment shall be satisfied. Many questions arise on process subsequent to the judgment in which jurisdiction is to be exercised. Were it even true that jurisdiction could technically be said to terminate with the judgment, an execution would be a *writ necessary for the perfection of what was previously done*, and would consequently be *necessary* to the beneficial exercise of jurisdiction. * * * * On the clearest principles of just construction, then, the fourteenth section of the judiciary act must be understood as giving to the courts of the Union respectively, a *power* to issue executions on their judgments." * * * "It may well be doubted, too, whether the act of congress which, conforms the mode of proceeding in the courts of the Union to those of the several states, requires the agency of state officers in any case not expressly mentioned."

The case of the *Bank v. Halstead, 10 Wheat, 53*, repeats the same thing. In *Ogden v. Saunders, 12 Id. 280*, the court say that the constitution provides "the safeguard of a tribunal which cannot be controlled by the state laws in the application of the remedy." See also, *United States v. Knight, 14 Pet. 316; Beers v. Houghton, 9 Id. 362.*

In *McNutt v. Bland, 2 How. 17*, the court say: "From the time of *Palmer and Allen, 7 Cranch, 554*, to *Diest v. Duncan, 1 How. 301*, the language and decisions of this court have been uniform for more than forty years, that a state law which is a peculiar municipal regulation not having any immediate relation to the progress of a suit, but imposing a restraint on state officers in the execution of the process of the courts, is altogether inoperative upon the officers of the United States in the execution of the mandates which issue to them. * * * All state laws regulating proceedings affecting insolvent persons, or that are addressed to state

courts or magistrates *in other respects*, which confer peculiar powers on such courts and magistrates, do not bind the federal courts, because they have no power to execute such laws. *1 How. 306 ; 14 Pet. 74 S. P.*"

See also, *McKenn v. Voorhees*, *7 Cranch, 279.*

In *Payne v. Hook*, *7 Wal. 429*, the question would seem to be set at rest.

The question is examined elsewhere with a degree of learning and ability which renders an extended argument in this brief quite unnecessary. See *1 Am. Law Review, p. 23 ; Dupuy v. Bemiss, 2 La. An. 513.*

II.

The act of 1828 did not take away the power of the federal courts "to alter and add to the process, whether mesne or final, and to regulate the modes of proceedings in suits and upon processes as had been held to exist under the acts of 1789 and 1792. *Beers v. Houghton, 9 Pet. 361.* This power under the two earlier acts was to make such improvements in its forms and modes of proceeding as experience may suggest." *Wayman v. Southard, 10 Wheat 42.* In that case the rule of the court below as to its process was derived from its uniform practice, without any formal entry. The court was speaking of this large discretionary power under these acts when, in referring to the lower court, it said: "The uniform course of that court from its first establishment, dispensing with this *mittimus*, may be considered as the alteration in this particular which the court was authorized by law to make." Now, in a very well considered opinion rendered in the federal circuit court for Arkansas, at an early day in its history, the rule was established that execution might issue against property in the hands of an administrator. See *United States v. Drennen, Hempst, C. C. 325.*

That the court had the power to adopt such a rule, whether wise or unwise, does not seem to be the subject of any reason-

able doubt. In any way of viewing the matter the question presents itself here in its simplest guise; no rights of any third person have interposed thmselves; no objection was made while the process was alive and subject to the control of the court; no appeal to the court was made after the sale during the period when it might still have been set aside; and the proceedings are now attacked on the ground of an absolute want of power. The cases where the federal courts have declined to interfere with property over which state courts have assumed jurisdiction neither reach this case, nor proceed upon the idea of any inherent impotence in the federal courts to execute their own judgments. The power has been too often asserted to be any longer denied. We regard the article in the *American Law Review* as a very fair and able statement of the law in this regard: and we think that a reference to the authorities cited by the writer shows, in a clear and satisfactory manner, that he has arrived at a correct conclusion. Any reason which would deny the power in this instance must undoubtedly have an extensive and unforeseen application in circumscribing the authority of the federal courts, and would reduce them to a condition of vassalage, or at least to one of considerable subserviency, to the state laws; would paralyze their influence and impair their usefulness; these being inseparable from a position of independence.

Respectfully,

ROSE,

For Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1874.

THOMAS D. W. YONLEY, Plaintiff,
vs.
W. D. LAVENDER, ADMINISTATOR, &c., Defendant.
No. ——.

WRIT OF ERROR TO THE SUPREME COURT OF ARKANSAS.

BRIEF FOR DEFENDANT IN ERROR.

In an execution sale under a judgment rendered in the circuit court of the United States for the eastern district of Arkansas against the estate of one DuBose, deceased, the plaintiff in error bought certain lands belonging to such estate situate in Arkansas county, State of Arkansas. The original suit was against the administrator of DuBose, and judgment was rendered against him, and the execution under which the sale was held was also issued against him, and all this several years after administration of DuBose's estate had been begun, and while it was being carried on in Arkansas county under the administration laws of the State of Arkansas; that is, the action was begun January 26, 1867; judgment rendered May 1, 1867; execution issued June 8, 1868, and sale of lands had December 1, 1868; and Yonley bought at that sale. In October, 1869, the first administrator of DuBose was removed, and Lavender (the defendant in error) was appointed administrator. On the 11th of April, 1870, the present suit was filed in the Arkansas county circuit court, and upon proper pleadings an agreed state of facts was presented, (see Trans., pp. 6–7,) and the finding and verdict was for Lav-

ender, from which Yonley appealed to the supreme court of Arkansas. Judgment affirmed there, and Yonley brings error to this court.

Question presented is, Was the sale under the execution issued from the circuit court of United States valid? which special question is involved in the general one, Can the United States courts execute judgments against the estates of deceased persons in the course of administration in the States?

The answer to both of these questions must be in the negative every time.

The Congress of the United States has never yet undertaken to pass laws regulating the administration of estates, but the States have full control over estates of deceased persons within their respective limits. The administration law of Arkansas (See *Gould's Digest*, p. 100, *et seq.*) provides amply for all these matters; gives a certain time in which estates are to be administered; provides how claims shall be classified and paid; how debts can be collected against such estates through her probate courts, and gives remedies alike to resident as well as non-resident creditors—makes no distinctions whatever as to these.

The argument that the United States courts furnish remedies to non-residents regardless of State laws, is answered at once when it is seen the State law, through her courts, in this respect gives the remedy to the non-resident as speedy and effectual as could be had in the United States court, and in a matter over which the State must necessarily have jurisdiction.

The argument that because the United States court rendered the judgment, it had the inherent power to enforce it, is met directly by the suggestion that this general power must give way before another already holding and controlling the whole subject.

Two years are allowed in which to wind up administrations, and claims not presented within that time are barred.

(Sec. 99, *Gould's Digest*, *sup.*) By the same section the claim upon which this whole proceeding is based would not come higher than the fourth class. If the execution from the United States court can be enforced, the whole estate is at its mercy, without regard to the claims in the three previous classes, and then the United States court administers the estate instead of the State court. This does not stand to reason; it is impossible.

Payne v. *Hook*, 7 Wall., 425, relied upon on the other side, looked at squarely with reference as to what was before this court, does not help the plaintiff at all. "The equity jurisdiction conferred on the federal courts is the same that the high court of chancery in England possesses—is subject to neither limitation nor restraint by State legislation, and is uniform throughout the different States of the Union." (7 Wall., 430.) True as gospel, every word of it. But there is no question here of equity jurisdiction at all, nor is there any question presented about restraining or limiting the jurisdiction of equity courts; so that case is nothing to the purpose here. The article referred to in the *American Review*, (6 October, 1866,) p. 23, does not even approximate to the discussion of this question. It goes into many other points of jurisdiction in the two separate judicial systems, State and national, but fails to enlighten us on this subject.

All the other cases cited by plaintiff do not approach this question, only very remotely and by a very meagre analogy, except *Hemp. Rep.*, 320, which never received confirmation from any quarter, but has often been rejected, as will be seen.

The circuit court of the United States, held at Little Rock (Judges Dillon and Caldwell) in April, 1872, after discussion of the question, made an order which disposed of the matter properly:

"JONES, BROWN & Co.
v.
"DAVID D. ROSS, Adm'r.

"It is further ordered and adjudged by the court that the

defendant shall pay the amount of the aforesaid judgment in due course of administration; and, failing to do so, it is further ordered that execution shall issue as heretofore herein ordered."

Much research and legal disquisition might be had as to why this should be or should not be; and a tremendous launch might be made into the powers of the General Government, the huge folds and extensive grasp of the fourteenth amendment, and we might run over the boundless, indefinable, and undefined field of State rights and national rights, about which all people seem to be well informed, and which seem at times well settled, and then at other times not so much that way; but it is too late in the day for all this.

After all, there is not so much settled in the law as one is inclined at first to think; and the more we practice the law the more timid all of us become in saying, "*that is clearly settled.*" But if I were called upon to indicate any one thing as settled in law in this country, it would be that a sale could not be had under an execution from a United States court in a case like the one here presented.

All the authorities upon this subject were reviewed by the supreme court of Arkansas in a masterly and acceptable opinion in *Horner* v. *Hanks*, 22 Ark., 572. There was nothing left of the question after that. But again it was pressed upon the same court, with an energy and ability worthy a better cause, in *Yonley* v. *Lavender*, 27 Ark., 252, and the same result was reached as before. In the last named case the court reviewed *Horner* v. *Hanks*, and all the cases before that as well as all since then, and, after applying them all in an exhaustive opinion, concurred in the rule as established in *Horner* v. *Hanks*.

It would be folly to attempt here to add to the force of these two cases, and it is equally so to attempt to combat them. Nothing more need be said than is contained in them.

A. H. GARLAND,
For Defendant.